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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 605

THE BEACON JOURNAL PUBLISHING COMPANY,
Petitioner,

VS.

AKRON TYPOGRAPHICAL UNION No. 182,

AND

AKRON STEREOTYPERS and ELECTROTYPERS UNION No. 37, INTERNATIONAL STEROTYPERS and ELECTROTYPERS UNION OF NORTH AMERICA,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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STATUTE

Labor-Management Relations Act of 1947, as amended (61 Stat. 156, 29 U.S.C. 185):
Section 301 5

IN THE

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Beacon Journal Publishing Company petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Sixth Circuit entered in this case on June 20, 1969.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A, *infra*, p. A1) was an order affirming a decision of the United States District Court for the Northern District of Ohio; the order of the Court of Appeals was not reported. The decision of the District Court (App. B, *infra*, pp. A3-A19) was not reported.

JURISDICTION

The order of the Court of Appeals was entered on June 20, 1969 (App. A, *infra*, p. A1). The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

The petitioner (hereinafter also referred to as the "employer") has labor contracts with the two unions involved herein. Each contract contains provisions for arbitration. Neither contract contains a no-strike provision. Each union filed a grievance concerning the payment of a Christmas Bonus in 1965. Neither contract contains any reference to a Christmas Bonus.

The questions presented are (1) whether, under the terms of these contracts, the employer is required to submit to the jurisdiction of an arbitrator to decide whether or not it had a right to change the basis for payment of the Christmas bonus, and (2) whether these unions, under the terms of these contracts, have foregone their right to strike.

STATUTE INVOLVED

The statutory provision involved is Section 301 of the Labor-Management Relations Act of 1947, 61 Stat. 136, 29 U.S.C. Sec. 151. It is set forth in Appendix E, *infra*, p. A41.

STATEMENT

A. Statement of Fact

The facts of this case are relatively simple and undisputed; the matter was submitted to the District Court on an agreed stipulation of fact (App. C, *infra*, p. A20). The unions commenced actions for specific performance in the United States District Court for the Northern District of Ohio, Eastern Division, asking that the employer be required to arbitrate a grievance concerning the payment of a Christmas bonus in December, 1965. Each union, Akron Typographical Union No. 182 and Akron Stereotypers and Electrotypers Union No. 37 filed separate actions which were subsequently consolidated for trial upon motion of the unions. The District Court then issued its Memorandum Adopted as Findings of Fact and Conclusions of Law on May 21, 1968 (App. B, *infra*, pp. A3-A19), a decision based on the Stipulation of Fact and briefs of counsel.

The parties have had a bargaining relationship for many years. Two year contracts have been negotiated and executed between the parties since at least 1938. From 1936 to 1964, the Employer paid each employee with more than one (1) year's service a Christmas Bonus consisting of two (2) weeks' pay at the current rate. In several instances, when the contracts expired in September and November, new contracts were not executed until the following year. Wages were paid retroactively at the negotiated rate. The Christmas Bonus, however, was always paid at the then current rate; in 1964, for instance, the amount of the bonus paid to an employee was the same as that paid to him in 1963 (App. C, *infra*, pp. A21-A22).

In 1965, the Employer decided to stabilize the payment to each employee because the gross payments had increased each year (App. C, *infra*, p. A22); 1965 was not a

contract expiration year. Therefore, each individual employee had received the same monetary amount of Christmas Bonus in 1963, 1964 and 1965.

At no time throughout the collective bargaining history between the Employer and these Unions has the subject of the Christmas Bonus been a subject of that bargaining (App. C, *infra*, p. 32).

Beginning in 1961 the payment of the bonus was accompanied by a letter from the Employer's President and Editor that stated that the Employer considered the bonus a voluntary matter (App. C, *infra*, pp. A24-A32). Two contracts, 1962 and 1964 were executed between the inception of these letters and the time of the grievance, March, 1966.

Copies of the 1964 labor contract between each of the unions and the Employer were attached to the complaints filed in the District Court; they may be found in the original record on appeal, consisting of two volumes of pleadings, which have been filed with this petition. Relevant portions of those contracts are set forth in Appendix D, *infra*, pp. A33-A40.

Neither contract contains any reference to a Christmas Bonus. Neither contract contains a no-strike provision. Each contract contains a provision stating that the ". . . contract is complete in itself and sets forth all the terms and conditions of the agreement of the parties herein." (App. D, *infra*, pp. A36 and A39).

B. The Decision of the District Court

The United States Court of Appeals for the Sixth Circuit affirmed the decision of the District Court in a brief order remanding the cases (App. A, *infra*, p. A1); the unions had brought their respective actions in the United States District Court for the Northern District of

Ohio, Eastern Division, pursuant to Section 301 of the Labor-Management Relations Act of 1947 (29 U.S.C. 185).

The District Court held that the unions had ". . . foregone their right to strike, notwithstanding the absence of an express no-strike clause in the contracts" (App. B, *infra*, p. A16), and that the Employer ". . . is obliged by the terms of its contracts to submit, according to the grievance procedures under the terms of its contracts, the alleged 'Christmas bonus' grievances plaintiffs complain of in these cases." (App. B, *infra*, p. A18).

REASONS FOR GRANTING THE WRIT

1. The decision of the Court below in the instant case conflicts with the decisions of this Court in the so-called Steelworkers Trilogy,* particularly *United Steelworkers* v. *Warrior and Gulf Navigation Co., infra,* as well as *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448, 1 L.Ed.2d 972, 77 S.Ct. 912 (1957). In *Textile Workers Union* v. *Lincoln Mills, supra,* the Court stated that the agreement to arbitrate grievances is the "*quid pro quo*" for the agreement not to strike on the part of the union. 353 U.S. 448, 455. Then, in *United Steelworkers of America* v. *Warrior & Gulf Navigation Co., supra,* the Court indicated that when such a no-strike clause is present, ". . . everything management does is subject to the agreement . . ." 363 U.S. 574, 583.

The unions with which petitioner has contracts have not pledged not to strike. Therefore, the decision of this Court would indicate that not everything management does is subject to arbitration. The scope of arbitration would be narrower and limited to the terms and conditions found in

*United Steelworkers of America v. American Mfg. Co., 363 U.S. 564, 4 L.Ed.2d 1403, 80 S.Ct. 1343; United Steelworkers of America v. Enterprise Wheel & Car Co., 363 U.S. 593, 4 L.Ed.2d 1424, 80 S.Ct. 1358; United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 4 L.Ed.2d 1409, 80 S.Ct. 1347.

the contracts themselves. The lower Court blithely brushed aside the complete lack of a no-strike pledge by assuming that to consider it would invite the Court to consider the merits of the grievances (App. B, *infra*, p. A13). While a Court cannot consider the *merits* of a grievance in a suit to enforce arbitration, *United Steelworkers of America* v. *American Mfg. Co., supra,* it cannot, in deciding the issue of arbitrability, completely ignore the absence of a no-strike pledge. *Textile Workers Union* v. *Lincoln Mills, supra; United Steelworkers* v. *Warrior and Gulf Navigation Co., supra.*

The principle is an important one in the field of labor relations. It is not an academic question that can be passed over so glibly in the name of "national policy" as did the Court below (App. B, *infra*, pp. A16-A17). Indeed, the national policy is fully achieved *only* when there is both an arbitration provision and a no-strike pledge. *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. at 578, fn. 4. The unions which have contracted with Petitioner contracted in good faith; however, they reserved the right to strike. Therefore, both parties recognized that some disputes could result in a strike. The parties should be free to contract. National policy should not be used to reform a contract and make it something the parties did not intend it to be. To so hold, as did the Court below, injects an intolerable degree of uncertainty into labor-management relations.

The decision of the Court below in the instant case also conflicts with the decision of this Court in *Drake Bakeries* v. *Local 50,* 370 U.S. 254, 8 L.Ed.2d 474, 82 S.Ct. 1346 (1962). The Court below relied heavily upon that case to support its holding (App. B, *infra*, p. A14). However, the Court below ignored the fact in *Drake Bakeries, supra,* that not only was there a no-strike clause, but also that the arbitration clause contained ". . . broad language indeed. . . ."

370 U.S. 254, 257. The parties had agreed to arbitrate all disputes arising between them. Petitioner and these unions did *not* so agree; the scope of the arbitration clause is narrow, limited to terms and conditions of the contract. A party under such circumstances should not be required to arbitrate something he never agreed or contemplated to arbitrate. *United Steelworkers of America* v. *Warrior & Gulf Navigation Co., supra.*

2. The decision of the Court below is also in conflict with that of another Court of Appeals on the same subject, the United States Court of Appeals for the Third Circuit in *Harris Structural Steel Company* v. *United Steelworkers,* 298 F.2d 363 (1962), cert. denied 369 U.S. 851 (1962). While that Court did order the employer to arbitrate a grievance concerning a "Christmas Gift", it did so only after a careful consideration of the labor contract between the parties. The contract contained a no-strike pledge. The arbitration clause was broad and contained an express reference to questions relating to wages. The Court specifically relied upon those facts. Therefore, the decision of the Court below conflicts with the *Harris* case, *supra,* because the critical factual elements cannot be reconciled.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX



APPENDIX A

Nos. 19,113 and 19,114

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

AKRON TYPOGRAPHICAL UNION No. 182
Plaintiff-Appellee

v.

THE BEACON JOURNAL PUBLISHING COMPANY
Defendant-Appellant

AKRON STEREOTYPERS AND ELECTROTYPERS UNION No. 37, INTERNATIONAL STEREOTYPERS AND ELECTROTYPERS UNION OF NORTH AMERICA
Plaintiff-Appellee

v.

THE BEACON JOURNAL PUBLISHING COMPANY
Defendant-Appellant

Order

(Filed June 20, 1969)

Before: PECK, McCREE and COMBS, Circuit Judges.

Appellee Unions brought actions for specific performance to require the appellant Company, to arbitrate the grievances that arose out of a change in the long-

standing method of calculating the amount of a Christmas bonus to the Company's employees.

In a well reasoned opinion, in which the grievances are discussed but not resolved, the District Court found that the Company was obligated by the terms of its contract to arbitrate the grievances. See also, *Beacon Journal Publishing Company* v. *N.L.R.B.*, 401 F.2d 366 (6th Cir. 1968).

Upon consideration of the record in these cases, the briefs and oral arguments of counsel, and for the reasons set forth in the District Court's opinion, we held that the Company is required to submit these grievances to arbitration, and accordingly,

IT IS ORDERED that the judgments of the District Court be, and hereby are affirmed, and the cases are remanded for further proceedings not inconsistent herewith.

ENTERED BY ORDER OF THE COURT.

/s/ Carl W. Reuss
Clerk

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

AKRON TYPOGRAPHICAL UNION No. 182 Plaintiff v. THE BEACON JOURNAL PUBLISHING COMPANY Defendant	**Civil Action No. C 66-129**
AKRON STEREOTYPERS AND ELECTROTYPERS UNION No. 37, INTERNATIONAL STEREOTYPERS AND ELECTROTYPERS UNION OF NORTH AMERICA Plaintiff v. THE BEACON JOURNAL PUBLISHING COMPANY Defendant	**Civil Action No. C 66-273**

Memorandum Adopted As Findings of Fact and Conclusions of Law

(Filed May 21, 1968)

KALBFLEISCH, CH. J.

These two actions for specific performance of arbitration provisions of labor-management bargaining agreements were instituted against the defendant, The Beacon Journal Publishing Company, by plaintiff Akron Typographical Union No. 182 and plaintiff Akron Stereotypers and Electrotypers Union No. 37, pursuant to Section 301 of the Labor-Management Relations Act of 1947 (29 U.S.C.A., Section 185).

Plaintiffs in these cases are labor organizations representing employees in an industry affecting commerce as defined in 29 U.S.C.A., and defendant is a corporation incorporated under the laws of the State of Ohio, is authorized to do business in Ohio, and operates a newspaper in the City of Akron, Ohio, where it employs members of plaintiff labor organizations. Plaintiffs, respectively, are the exclusive bargaining agents for the classes of employees represented by them.

Case No. C 66-182 wherein Akron Typographical Union No. 182 (hereinafter called Local 182) is plaintiff, and case No. C 66-273 wherein Akron Stereotypers and Electrotypers Union No. 37, International Stereotypers and Electrotypers Union of North America (hereinafter called Local 37) is plaintiff, upon motion of the plaintiffs, were consolidated for trial by the Court over defendant's objection. The consolidated cases were called for trial and a joint stipulation of facts was submitted by the parties as evidence in both cases, it being the desire of the parties to dispense with a formal trial in favor of having the Court decide the issues drawn by the pleadings. Counsel for the parties have submitted briefs in support of their respective positions. Appropriate portions of the parties' joint stipulation of facts (Joint Exhibit 1) set forth the common background giving rise to these cases:

"1. The parties agree that there has been a bargaining relationship between them prior to 1938, and that the bargaining relationship has continued uninterrupted up to the present time and has resulted in biannual bargaining agreements between the parties covering issues such as wages, hours, and working conditions of plaintiff's members and defendant's employees; that specifically new contracts were negotiated and executed between the defend-

ant's employees and each of the plaintiffs' unions, effective in 1962 and 1964." (Stip. p. 1, para. 2).

"2. With the exception herein after set forth, since 1936, the defendant has paid its employees, including those who are plaintiffs' members, a Christmas bonus consisting of two (2) weeks' pay at the employees current rate and that this practice continued up to December, 1965, when the formula was changed when instead of receiving their current rate of pay for the two (2) week bonus the employees received a bonus based upon their 1964 rate of pay, so that in 1965, the employees received the same bonus they received in 1964. * * *." (Stip. pp. 1-2, para. 3, exceptions omitted.)

"3. That such bonus was paid to all employees of the defendant employer, including those employees represented by unions and those employees not represented by any union, including supervisors and officers." (Stip. p. 2, para. 8).

* * * (Schedule of yearly payments omitted.)

"4. That at no time has the question of the Christmas bonus been the subject of bargaining between either of the plaintiffs' unions and the defendant's employers." (Stip. p. 3, para. 9.)

"5. That thereafter the plaintiffs filed a written protest over the defendant's change of the formula for computing the Christmas bonus and that the defendant has refused and continues to refuse to arbitrate said grievances as are represented by Exhibit B of the original complaint contending that said grievances are not arbitrable under the terms of the Collective Bargaining Agreement. (Exhibit A attached to Original Complaints)." (Stip. p. 3, para. 10.)

"6. That since December 15, 1961, the defendant has delivered each year a letter with the 'Christmas Bonus' to each employee making it clear that the defendant considers the bonus to be a gift and not an obligation under the bargaining agreement or otherwise, a copy of said letters being attached and made a part of this stipulation as if fully rewritten herein." (Stip. pp. 3-4, para. 11.)

"7. Attached to and made a part hereof are true copies of the contracts between the parties executed in 1960 and 1962 and effective for the periods provided for therein." (Stip. p. 4, para. 12.)

The specific grievances plaintiffs wish to arbitrate are represented by Exhibit B attached to plaintiff's original complaint in Case No. C 66-129, and by Exhibit B attached to plaintiff's original complaint in Case No. C 66-273. (Stip.) Relevant portions of Exhibit B in Case No. C 66-129 are as follows:

> "The Company's unilateral action in this case constitutes a violation of the Collective Bargaining Agreement between the parties in that it violates a custom and practice in usage between the parties for so many years.
>
> "Further, the Union is of the opinion that the Company's unilateral action violates the second paragraph of the preamble of the contract between the parties in that it has changed wages and conditions of employment without negotiating same with the Union."

Relevant portions of Exhibit B in Case No. C 66-273 are as follows:

> "The Company's unilateral action in this case constitutes a violation of the Collective Bargaining Agreement between the parties in that it violates a custom and practice in usage between the parties for so many years.

"Further, the Union is of the opinion that the Company's unilateral action violates Article II, Sections A and B of the contract between the parties in that it has changed wages and conditions of employment without negotiating same with the Union."

The second paragraph of the preamble of the contract between Local 182 and defendant, referred to in that union's above-quoted grievance, is as follows:

"If either party wishes to propose a change in wages, hours or any of the conditions of this Agreement to take effect on or after September 30, 1967, it shall notify the other party to this Agreement in writing not less than sixty days prior to the expiration of this Agreement."

Article II, Sections A and B of the contract between Local 37 and defendant, referred to in Local 37's grievance, is as follows:

"ARTICLE II DURATION

"SECTION A. The duration of this Agreement shall be for a period of three (3) years, from the First Day of November, 1964, to the First Day of November, 1967—retroactive to the date of expiration. It is mutually agreed, however, that this Agreement may be opened for adjustment of wages and other conditions by either party giving written notice to the other party sixty (60) days prior to the anniversary of the signing date during the life of this Agreement.

"SECTION B. Should either party desire to negotiate for changes in any or all of the provisions of this Agreement at its expiration date, or terminate the Agreement, written notice to that effect shall be given sixty (60) days prior to the expiration date."

In each of these cases defendant asserts by its answer that the amount of the "Christmas bonus" it has paid is not referable to the contracts existing between defendant

and the respective plaintiffs and is not a valid grievance or a proper subject of arbitration.

In Case No. C 66-129 defendant asserts in paragraph 4 of its answer to the complaint:

> "Answering the third paragraph of the complaint, defendant admits that said agreement contains Article I, Section 10, which section provides for the settlement of certain disputes which may arise between the parties; but this defendant alleges that said section is limited to the settlement of disputes which may arise as to the construction to be placed upon any clause of the agreement with certain exceptions not herein pertinent, and defendant denies that said clause or contract provides for the settlement of any dispute other than those described which might arise between the parties."

Further answering, in paragraph 5 defendant states in part:

> "Further answering paragraph four of said complaint, defendant says that the writing set forth as Exhibit B is not a dispute as that term is defined in said Article I, Section 10, in that it is not concerned with the construction of any clause of the agreement, nor is it concerned with any exception contained elsewhere in said labor agreement. Defendant says that no clause, language or reference to any Christmas bonus pay is contained, referred to, or alluded to in any clause or part of said contract."

In Case No. C 66-273 defendant asserts in paragraph 4 of its answer to the complaint:

> "Denies the allegations of the fourth paragraph in that the dispute therein alleged is not a grievance as that term is defined in Article XVI of the said agreement. Defendant says that said Article provides in Section A that to the joint standing committee shall be referred for settlement all disputes, including discharges, arising out of the operation of the agreement.
>
> * * *

"Defendant alleges further that there is no mention of or reference to a Christmas bonus in the agreement which was in effect at all times referred to in the complaint, which agreement is attached to the complaint as Exhibit A."

The third paragraph of Article XII, Section 3, of the agreement between Local 182 and defendant is as follows:

"This agreement is complete in itself and sets forth all the terms and conditions of the agreement between the parties hereto."

Article XVII, Section D, of the agreement between Local 37 and defendant is as follows:

"SECTION D. This contract is complete in itself and sets forth all the terms and conditions of the agreement of the parties hereto."

Plaintiff Local 182 alleges and defendant admits that Exhibit A attached to the original complaint in Case No. C 66-129 is a true copy of an agreement in writing entered into on or about October 1, 1964 by Local 182 and defendant.

Article I, Section 10, of the agreement between Local 182 and defendant is as follows:

"Section 10—A standing committee of two representatives appointed by the employer and a like committee of two representatives appointed by the Union, shall be maintained; and in case of a vacancy, absence or refusal of either of such representatives to act, another shall be appointed in his place. To this Joint Standing Committee shall be referred all disputes which may arise as to the construction to be placed upon any clause of the agreement, except as provided otherwise herein, or alleged violations thereof, which can not be settled otherwise, and such Joint Standing Committee shall meet when any question of differences shall have been referred to it for decision by the

executive officers of either party of this agreement. Should the Joint Standing Committee be unable to agree, then it shall refer the matter to a board of arbitration, the representatives of each party to this agreement to appoint two arbiters, and the four to agree upon a fifth. The decision of this board shall be final and binding upon both parties; Provided: That local union laws not affecting wages, hours, or working conditions and the General Laws of the International Typographical Union shall not be subject to arbitration."

Plaintiff Local 37 alleges and defendant admits that Exhibit A attached to the original complaint in Case No. C 66-273 is a true copy of an agreement in writing entered into on or about November 1, 1964 by plaintiff Local 37 and defendant, which agreement sets forth the basic agreement covering rates of pay, hours of work, and working conditions of employment to be observed by the parties thereto (Complaint, para. 2; and answer, para. 2).

Article XVI of the agreement between Local 37 and defendant is as follows:

"ARTICLE XVI JOINT STANDING COMMITTEE

"SECTION A. A Joint Standing Committee of four (4) members shall be appointed, two (2) members of said committee to be named by the Party of the First Part, and two (2) members by the Party of the Second Part. To this committee shall be referred for settlement all disputes, including discharges, arising out of the operation of this Agreement.

"The Joint Standing Committee must meet within three (3) days from the date on which either party hereto through its authorized representative notifies the other party in writing that a meeting is desired and shall proceed forthwith to settle any questions before it. Such decision is to be final and binding on both parties to this Contract.

"SECTION B. If the Joint Standing Committee cannot reach a unanimous agreement on any dispute, the members of the Committee shall form a Board of Arbitration and shall select a fifth member who shall act as Chairman of the Board. Said fifth member may be selected in any manner unanimously agreed upon by the other four (4) members.

"SECTION C. If the said four (4) members fail to select a fifth member within ten (10) days from the date on which either party requested the formation of the Arbitration Board, said fifth member shall be selected by the President of the INTERNATIONAL STEREOTYPERS AND ELECTROTYPERS UNION and the Chairman of the Special Standing Committee of the A.N.P.A. or their proxies upon the request of either of the parties hereto. When the fifth member is agreed upon, the Board of Arbitration thus formed shall proceed with all dispatch possible to settle the dispute. It shall require the affirmative votes of at least three (3) of the five (5) members of the Board of Arbitration to decide the issues, and the decision of the Board of Arbitration in all cases shall be final and binding on the parties hereto. The decision of the Board of Arbitration shall be rendered within ten (10) days of the hearing and shall be signed by all members thereof, but is legal and binding when signed by the majority."

Plaintiffs' asserted grievances, regarding the amount of the "Christmas bonus" paid by defendant in 1965 are founded on their apparent conclusion that defendant has a contractual duty to pay such a bonus.

There is no provision in either contract specifically including or specifically excluding the subject of a "Christmas bonus."

Defendant, therefore, does not acknowledge any contractual duty to pay a "Christmas bonus." Hence it argues that the formula used to compute the amount of the "bonus"

paid by it is not a dispute within the scope of its promise to arbitrate.

In *Harris Structural Steel Co.* v. *United Steel Workers,* 298 F.2d 363 (1962), cert. den. 369 U.S. 851, the United States Court of Appeals for the Third Circuit was presented with a similar problem. In that case the union, as bargaining agent for certain employees, had negotiated agreements with the employer over a period of many years. Each year during this period the employer had granted to each employee a Christmas bonus calculated in terms of that employee's current rate of pay. The bargaining agreement in force in 1960, when the dispute arose, as here, contained no express provision for payment of a Christmas bonus. In 1960 the employer granted Christmas bonuses in amounts substantially less than those granted the previous year. The union sought to compel the employer to submit to arbitration the dispute regarding the reduced bonus payments.

In considering the employer's argument, the Court stated at page 365:

> "Five points are very clear: first, the Company recognizes the Union as the exclusive representative of the employees in the bargaining unit in respect to rates of pay and wages; second, the issue of bonus payments is not specifically excluded from the grievance provisions of the collective bargaining agreement; third, the grievance and arbitration article of the agreement expressly includes any question relating to wages, in addition to 'differences * * * as to the meaning and application of the provisions of this agreement'; fourth, the sums granted, whether given or paid, to the employees at or near the Christmas season, were estimated in terms of wages; and, fifth, the agreement contains a no-strike provision.
>
> * * *

> "Wages are specifically included in the arbitration article of the collective bargaining agreement; the additional money grants are calculated in terms of wages and are not specifically excluded from the article. Mr. Justice Douglas stated in the Warrior opinion, 363 U.S. 581, 80 S.Ct. 1352: 'Apart from matters that the parties specifically exclude, all of the questions on which the parties disagree must therefore come within the scope of the grievance and arbitration provisions of the collective agreement. The grievance procedure is, in other words, a part of the continuous collective bargaining process. It, rather than a strike, is the terminal point of a disagreement.' The conclusion is irresistible that the grievance is arbitrable and that the court below was correct in so holding. The judgment will be affirmed."

Of the five points enumerated above, one expressly is not included in the bargaining agreements before this Court.

Neither bargaining agreement contains an express, absolute no-strike clause. Defendant argues that, absent an absolute no-strike clause, the *quid pro quo* is lacking for an implied agreement by the parties to arbitrate *all* labor disputes and that hence the Court may not find the "Christmas bonus" issue to be impliedly within the terms of the contracts in suit, there being no reference to it in the written integration. In advancing this latter contention, defendant assumes the truth of its characterization of payment of the "Christmas bonus" as a "gift."

While defendant's argument is beguiling, it invites the Court to indulge in consideration of the merits of plaintiffs' original written protests that defendant has unilaterally "changed wages and conditions of work" in violation of the terms of their contracts.

Further, the Court is of the opinion that defendant's reliance on literal interpretation of the "*quid pro quo*" language used in the Supreme Court's opinions in the Steelworkers Trilogy is without merit in the circumstances of the present case. In the concurring opinion of Mr. Justice Brennan in the first case of the Trilogy, *United Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564, 573, in which opinion Mr. Justice Harlan joined and in which comments Mr. Justice Frankfurter joined, it is stated:

> "The Court makes reference to an arbitration clause being the quid pro quo for a no-strike clause. I do not understand the Court to mean that the application of the principles announced today depends upon the presence of a no-strike clause in the agreement."

In the later decision of *Drake Bakeries* v. *Bakery Workers*, 370 U.S. 254, 261, Mr. Justice White, speaking for the Court, stated:

> "However, this Court has prescribed no such inflexible rule rigidly linking no-strike and arbitration clauses of every collective bargaining contract in every situation.[7]"

Footnote 7 referring to the above quotation is as follows:

> "[7]We do not understand the opinions in Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 455, or United Steelworkers v. American Mfg. Co., 363 U.S. 564, 567, to enunciate a flat and general rule that these two clauses are properly to be regarded as exact counterweights in every industrial setting, or to justify either party to the contract in wrenching them from their context in the collective agreement on the ground that they are mutually dependent covenants which are severable from other promises between the parties."

There is a strong national policy favoring arbitration as a means of resolving labor disputes, and the Court should resolve all doubts as to the scope of the bargaining agreement in favor of arbitrability, deferring, however, to the principle that a party may not be compelled to arbitrate that which it has not agreed to arbitrate. *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-583 (1960). In that case, the third of the Trilogy, it is stated:

> "The Congress, however, has by §301 of the Labor Management Relations Act, assigned the courts the duty of determining whether the reluctant party has breached his promise to arbitrate. For arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit. Yet, to be consistent with congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration, the judicial inquiry under §301 must be strictly confined to the question whether the reluctant party did agree to arbitrate the grievance or did agree to give the arbitrator power to make the award he made. An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage."

In both cases now before this Court the parties have committed themselves to final and binding arbitration of disputes arising under the terms of their bargaining agreements. In Case No. C 66-129 the contract provides for arbitration of disputes affecting wages, hours or working conditions, including the construction to be placed on any clause, or alleged violation of any clause. In Case No. C 66-273 the bargaining agreement provides for arbitration of all disputes, including discharges, arising out of the operation of the contract, and includes in its express terms the subject of wage negotiations as set forth previously herein.

The Court finds that insofar as any one of the above stated matters constitutes the subject matter of a dispute between plaintiffs and defendant, the plaintiffs have foregone their right to strike, notwithstanding the absence of an express no-strike clause in their contracts.

Since all the parties in both of these cases have agreed to final and binding arbitration of disputes arising under the terms of their bargaining agreements, the sole issue to be determined by the Court is whether "the party seeking arbitration is making a claim which on its face is governed by the contract." *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564, 568 (1960). The Court may not consider the merits of the dispute alleged.

Plaintiffs initially referred their "Christmas bonus" disputes to the respective Joint Standing Committees. Defendant refused and has continued to refuse to comply with plaintiffs' demands and Article I, Section 10 of the Local 182 contract, and Article XVI, Section A of the Local 37 contract. It is in this posture that the "Christmas bonus" issue comes before this Court. Therefore, it is the Court's opinion that defendant's factual arguments and conclusions are not properly presented to the Court upon the question of the scope of the parties' promises to arbitrate, but have relevance, if any, only to defendant's apparent apprehension of an arbitration decision adverse to it. This Court may not, in advance of arbitration, pass upon the question of whether the arbitration award is supportable. Rather, it may now determine only whether or not the dispute is arbitrable. See, e.g., *Safeway Stores* v. *American Bakery & Con. W.I.U. Local 111*, 390 F.2d 79 (CA 5, 1968).

It is the Court's conclusion that it would be antagonistic to the national policy favoring peaceful settlement

of labor disputes for this Court to require plaintiffs to resort to strikes to settle disputes involving arguable violations of their bargaining agreements with defendant.

This Court has little difficulty in finding arbitrable the underlying question of defendant's duty to pay a "Christmas bonus." Just as they failed to include specific "Christmas bonus" terminology in their contracts, the parties likewise failed to specifically exclude it. Since the "Christmas bonus" formula used in the computations complained of is couched in terms of "two weeks pay," this Court may not say with positive assurance that the arbitration clauses are not "susceptible of an interpretation that covers the dispute." See *Harris Structural Steel Co.* v. *United Steelworkers*, 298 F.2d 363 (CA 3, 1962); *American Lava Corp.* v. *Local Union No. 222*, 250 F.2d 137 (CA 6, 1958).

The dispute as to the formula used to compute "Christmas bonuses" is inextricably included in the question of defendant's duty to pay such amounts in the first instance. Unquestionably, evidence and arguments tending to prove or to disprove defendant's asserted prerogative to set the amount of "Christmas bonus" will be of weight in the arbitration board's determination of defendant's duty to pay. Conversely, the duty to pay, if found, may well delimit the defendant's discretion in this respect. Obviously, if no duty to pay a "Christmas bonus" is found, the question of the formula to be used, standing alone, need not be reached by the arbitration board.

Equating the formula by which defendant arrived at the amount of the "Christmas bonus" as an arbitrable dispute under the contract is the essential or most important point in this litigation. Plaintiffs contend that the formula employed by the defendant in determining the amount of

the bonus is an integral part of the clauses in the bargaining agreements having to do with wages, hours and working conditions. In the light of the stipulated facts, this Court would have little difficulty in deciding that a total discontinuance of the "Christmas bonus" would be arbitrable. However, this Court would be very reluctant to find the formula used in determining the amount of the bonus arbitrable were it not for the decision of the Third Circuit Court of Appeals in *Harris Structural Steel Co.* v. *United Steelworkers*, supra. Specific guidelines were adopted in *Harris* which this Court believes it is compelled to follow. Therefore, it is this Court's conclusion that defendant is obliged to submit the issue of the "Christmas bonus" according to the contract grievance procedures under the terms of the bargaining agreements.

This finding in no way indicates the Court's opinion as to what decision the Joint Standing Committee or a board of arbitration should or must make in settling the "Christmas bonus" dispute, either as to finding the "Christmas bonus" to be or not to be a gift as opposed to wages, or as to any other matter concerning the merits of plaintiffs' grievances. The Court holds only that defendant is obliged by the terms of its contracts to submit, according to the grievance procedures under the terms of its contracts, the alleged "Christmas bonus" grievances plaintiffs complain of in these cases.

The foregoing memorandum is adopted by the Court as its findings of fact and conclusions of law in accordance with the provisions of Rule 52(b) of the Federal Rules of Civil Procedure. The plaintiffs are instructed to submit appropriate orders in their respective cases.

Girard E. Kalbfleisch
Chief Judge

Order

(Filed August 26, 1968)

These causes came on for hearing before The Honorable Judge Kalbfleisch, Chief Judge in the United States District Court for the Northern District of Ohio, Eastern Division, and the cases having been consolidated by a prior Order of the Court were called for trial and a joint stipulation of facts was submitted by the parties as evidence in both cases, it being the desire of the parties to dispense with a formal trial in favor of having the Court decide the issues drawn by the pleadings.

Based on the stipulation, the pleadings, the exhibits attached to the pleadings and having considered the briefs of the parties, it is the Order of this Court that Defendant, The Beacon Journal Publishing Company, in both of the captioned cases be and they hereby are required to arbitrate the two grievances which are attached to Plaintiff's original complaint in both Case Nos. C 66-129 and C 66-273 and marked respectively as Exhibit "B" to each complaint.

Costs taxed to the Defendant.

Exceptions to Defendant.

Girard E. Kalbfleisch
Judge

APPROVED BY:

/s/ R. C. Sheppard
Attorney for Plaintiffs

/s/ Charles R. Iden
Attorney for Defendant

APPENDIX C

Joint Exhibit No. 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

AKRON TYPOGRAPHICAL UNION, No. 182, et al. Plaintiffs vs. THE BEACON JOURNAL PUBLISHING COMPANY Defendant	**Civil Actions Nos. C 66-129 C 66-273**

Stipulation

(Filed January 18, 1968)

The above-numbered and entitled causes being at issue and the cases having been consolidated for hearing by an order of this Honorable Court, previously issued, and it being the desire of the parties to dispense with trial on the merits in favor of having the issues drawn by the pleadings decided by the Court, with the exhibits previously filed and the facts recited in this document to be considered as evidence by the Court in making its determination.

1. The parties agree that there has been a bargaining relationship between them prior to 1938, and that the bargaining relationship has continued uninterrupted up to the present time and has resulted in bi-annual bargaining agreements between the parties covering issues such as wages, hours, and working conditions of plaintiffs' members and defendant's employees; that specifically new contracts were negotiated and executed between the defendant's employees and each of the plaintiffs' unions, effective in 1962 and 1964.

2. With the exception herein after set forth, since 1936, the defendant has paid its employees, including those who are plaintiffs' members, a Christmas bonus consisting of two (2) weeks' pay at the employees current rate and that this practice continued up to December, 1965, when the formula was changed when instead of receiving their current rate of pay for the two (2) week bonus the employees received a bonus based upon their 1964 rate of pay, so that in 1965, the employees received the same bonus they received in 1964.

It is further stipulated that as an exception to the foregoing, an amount less than two (2) weeks pay was paid to employees with less than one (1) years service.

It is further stipulated that any employee who was separated from the employer for any reason whatsoever prior to the payment received no bonus.

It is further stipulated that the plaintiffs' union contract with the defendant's employees terminated in September and November of each even-numbered year; that on numerous occasions the new contract would not be executed until the following year, and that this happened at the time of the expiration of the contracts in 1964. At such times, the Christmas bonus was based upon the rate in the expired contract, which was the current rate for pay purposes until the execution of the newly negotiated agreement. In each case, each employee received any increase negotiated retroactive to the termination date of the expired contract, but in no case was the Christmas bonus increased to the newly negotiated contract rate. For this reason, the Christmas bonus given to each employee in 1964 was equal to and the same as paid to employees in 1963.

It is further stipulated that each employee who received a Christmas bonus in 1963, 1964 and 1965, received

the same amount each year; and, it is stipulated that a new contract was executed containing a new rate of pay for each employee represented by plaintiffs herein prior to the Christmas bonus for 1965 being paid, which contracts are Exhibit A attached to the Complaints filed herein.

3. That such bonus was paid to all of the employees of the defendant employer, including those employees represented by unions and those employees not represented by any union, including supervisors and officers.

December 1936	$ 28,941.10
December 1937	70,000.00
December 1938	36,918.98
December 1939	—0—
December 1940	40,194.16
December 1941	47,238.25
December 1942	43,592.73
December 1943	43,697.69
December 1944	43,043.21
December 1945	48,035.47
December 1946	60,155.61
December 1947	67,961.16
December 1948	73,868.71
December 1949	80,587.77
December 1950	88,357.63
December 1951	94,988.97
December 1952	98,213.47
December 1953	108,693.42
December 1954	114,675.62
December 1955	119,070.13
December 1956	122,360.24
December 1957	132,018.51
December 1958	139,458.00
December 1959	147,829.12
December 1960	152,713.02
December 1961	156,774.15
December 1962	159,041.44
December 1963	170,789.52
December 1964	173,263.21
December 1965	176,923.00

4. That at no time has the question of the Christmas bonus been the subject of bargaining between either of the plaintiffs' unions and the defendant's employers.

5. That thereafter the plaintiffs filed a written protest over the defendant's change of the formula for computing the Christmas bonus and that the defendant has refused and continues to refuse to arbitrate said grievances as are represented by Exhibit B of the original complaint contending that said grievances are not arbitrable under the terms of the Collective Bargaining Agreement. (Exhibit A attached to Original Complaints).

6. That since December 15, 1961, the defendant has delivered each year a letter with the "Christmas Bonus" to each employee making it clear that the defendant considers the bonus to be a gift, and not an obligation under the bargaining agreement or otherwise, a copy of said letters being attached and made a part of this stipulation as if fully rewritten herein.

7. Attached to and made a part hereof are true copies of the contracts between the parties executed in 1960 and 1962 and effective for the periods provided for therein.

ACCORDINGLY, IT IS HEREBY STIPULATED by and between the parties Akron Typographical Union No. 182, Akron Stereotypers and Electrotypers Union No. 37, and The Beacon Journal Publishing Company, that without further notice or hearing, except for the filing of briefs and such oral argument as the Court at its discretion may direct, the issues of this case shall be considered as having been submitted and the Court may render judgment in these causes on the basis of such facts as are already before the Court in the form of pleadings and exhibits and upon the arguments, oral and written of counsel.

Thus stipulated, done and signed in conference before this Honorable Court at Cleveland, Ohio, this 18th day of January, 1968.

Erickson, Sheppard & Wheeler
By R. C. Sheppard, of Counsel
1410 First National Tower
Akron, Ohio 44308 253-3128
Counsel for Plaintiffs

Brouse, McDowell, May, Bierce & Wortman
By Charles R. Iden
By C. Blake McDowell, Jr., of Counsel
500 First National Tower
Akron, Ohio 44308 535-1591
Counsel for Defendant

John S. Knight
President and Editor
AKRON BEACON JOURNAL
Akron, Ohio 44309
Telephone 253-1111

1965

Dear Beacon Journal friends:

Enclosed you will find our voluntary Christmas distribution in substantially the same amount as last year.

This is an appropriate time to remind all members of the Beacon Journal family of the benefits being paid by your company to all employes.

Mention must also be made of the non-contributory pension plan which assures greater financial security at the time of retirmement.

1. On the Beacon Journal, additional fringe benefits average about 40 per cent as compared to the national average of 30 per cent.

2. In 1964, an amendment to the pension plan increased by more than 50 per cent the benefits provided under the original plan. Pension payments to retired employes amounted to $109,000 in 1964.

To further provide for your security at retirement, the Beacon Journal contributes some $30,000 a month to a trust fund which is managed by the First National Bank of Akron. Total government bonds and securities now held in this fund have a value in excess of $3,300,000.

Under Medicare, the company's additional Social Security cost for each employe will be $103.20 in 1966.

Attention is called to these additional company costs and benefits since they are occasionally forgotten by all of us.

I hope you will agree that the Beacon Journal is "a good place to work."

My gratitude to you for your help and cooperation and warmest greetings of the season to you and yours.

/s/ JSK
John S. Knight

Affiliated Ownership: The Miami Herald—The Detroit Free Press—The Charlotte Observer—The Charlotte News—The Tallahassee Democrat

John S. Knight
President and Editor

K. L. Milburn
General Manager

AKRON BEACON JOURNAL
Akron, Ohio 44309
Telephone 253-1111

December 16, 1964

To my associates of the Beacon Journal:

I am glad to announce that our voluntary Christmas bonus is being offered again this year.

The past 12 months have been unusually eventful. I am proud of our excellent coverage of the two political conventions and the campaign itself.

Certainly, no one could truthfully assert that the Beacon Journal was unfair or biased in its election reporting. The combined efforts of the news department, our Washington and Columbus bureaus and political writers kept our readers fully informed with objective and interesting news stories and commentary.

* * *

Our policy—as in former years—was to keep our editorial opinions on the editorial page—where they belong.

Although our political endorsements did not please everyone, the columns of the Beacon Journal were always open to those who disagreed. We carried, throughout the campaign, a balanced array of columnists and special writers so that every point of view was fully presented.

* * *

Business conditions were good in 1964, and look healthy for at least another six months.

Management has maintained its program of modernization and plant improvement.

Our editorial standards are high. Although we are a one-newspaper city, the Beacon Journal strives to publish the best newspaper in Ohio. And I think we do.

We sometimes forget that radio, television, bill boards and magazines are all vigorously competing for the advertisers' dollar. We have no "monopoly" on that important "commodity." So we must sell the productive worth of our newspaper and sell hard.

A successful newspaper demands a finely coordinated team with all departments functioning smoothly and efficiently. This I think we have. And we must keep it so.

My gratitude to all of you for your help and cooperation, and warmest greetings of the season to you and yours.

/s/ JSK
John S. Knight

Affiliated Ownership: The Miami Herald—The Detroit Free Press—The Charlotte Observer—The Charlotte News

John S. Knight
President and Editor

K. L. Milburn
Business Manager

AKRON BEACON JOURNAL
Akron 9, Ohio
Telephone Blackstone 3-1111

1963

To my associates of the Beacon Journal:

Webster's describes a bonus as "anything given in addition to the customary or required amount."

Well, we're giving one again this year—and doing so voluntarily.

I can't really say that 1963 has been the Beacon Journal's banner year. Net earnings are down slightly despite major circulation gains and modest increases in retail and classified linage. As you know, national advertising is not healthy anywhere.

But we did pretty well, considering the indisputable fact that it simply costs more to put out a newspaper these days.

* * *

We have an efficient operation, but certainly we can do better. The organizational changes made about five weeks ago were designed to strengthen our management team as we build and plan for the future.

* * *

My pride in the Beacon Journal and my concern for the welfare of all who work here is well known to all of you.

It is the responsibility of management to be alert to changing times, new techniques, better methods of selling and distribution. We are dedicated to institutional strength and long range stability.

Our hearts are heavy over the tragedy which befell our late President. John F. Kennedy was a man of extraordinary charm and ability whose imprint upon the course of American history will endure through the years.

As we enter the Yuletide season, let us pay tribute to his memory by resolving to cleanse our souls of unreasoning prejudices and division.

I am grateful to each of you for your cooperation and assistance during the past year, and extend to you and yours my greetings of the season and best wishes for 1964.

/s/ JSK
John S. Knight

John S. Knight
President and Editor

K. L. Milburn
Business Manager

AKRON BEACON JOURNAL
Akron 9, Ohio
Telephone Blackstone 3-1111

December 11, 1962

To my associates of the Beacon Journal:

I am pleased to inform you that we are distributing a Christmas bonus this year. As in the past, it is offered on a voluntary basis.

While general business conditions show an improvement over last year, we have not made the gains in advertising linage that had been anticipated.

This is mainly due to the fact that our large department stores have not expanded newspaper advertising in recent months.

In addition, we have felt the adverse impact of a national downtrend in general (National) advertising. Huge appropriations which formerly were spent largely in newspapers are now being diverted to radio, television, magazines and other media.

This splitting up of the advertisers' dollar presents a real threat to the newspaper business. It means that we

must be more alert, resourceful and energetic in our sales efforts. Circulation, I am glad to report, remains healthy.

The other challenge to the stability of newspapers is that rising costs continue to run ahead of increased revenues. This statement is no mere fiction. The number of metropolitan newspapers which "fold" every year has led many financial experts to the conclusion that we are "a sick industry."

While I am not prepared to wholly agree with that statement, it is nevertheless true that the newspaper business is in trouble and we ought to recognize that only the well managed, cost conscious newspapers may in the long run survive.

I appreciate the traditional loyalty and cooperation of all Beacon Journal employes in helping to keep our institution financially sound with a record of high level job stability.

We shall be equal to the test, provided we can maintain a dedication to our individual responsibilities and strengthen the determination to produce an ever better product under the most efficient management procedures which can be devised.

To you and yours, I offer greetings of the season and my gratitude for a job well done.

/s/ JSK
John S. Knight

Affiliated Ownership: The Miami Herald—The Detroit Free Press—The Charlotte Observer—The Charlotte News

John S. Knight
President and Editor

K. L. Milburn
Business Manager

AKRON BEACON JOURNAL
Akron 9, Ohio
Telephone Blackstone 3-1111

December 15, 1961

To my associates of the Beacon Journal:

Once again, we are distributing a Christmas bonus. As in the past, it is offered on a voluntary basis.

I am sure you will understand that business conditions in the year just ending have not met our expectations. Advertising volume will fall well below previous years, with a corresponding loss in revenue.

Circulation continues to hold at a comparatively steady level and the price increase last summer resulted in no substantial circulation loss.

Payment of the Christmas bonus in the year ahead will depend upon how energetically our sales departments can develop additional advertising and circulation revenue.

Although we are said to have "no competition" in Akron, I can assure you that radio, television, magazines, billboards and direct mail are all fighting for and getting an increasing share of the advertiser's dollar.

It is likewise essential that operating costs be held within prudent limits without damaging the editorial product.

This can be accomplished by applying more efficient methods to our day-to-day operation.

The responsibility of management is to see that we have at all times an institution that is financially sound and maintains a high level of job stability

I am grateful to you for your heop and loyalty to the Beacon Journal.

May the holiday season be a joyous one for you and yours, and the days ahead less troubed for our country and the free world.

/s/ JSK
John S. Knight

Affiliated Ownership: The Miami Herald
The Detroit Free Press—The Charlotte
Observer—The Charlotte News

APPENDIX D

Relevant Provisions of the 1964 Contracts Between Petitioner and the Respective Unions

This Agreement made and entered into this First Day of November, 1964, by and between the

AKRON BEACON JOURNAL PUBLISHING COMPANY, hereinafter called the Party of the First Part, and the

AKRON STEREOTYPERS AND ELECTROTYPERS UNION No. 37, I.S. & E.U. (a local Union of the International Stereotypers and Electrotypers Union of North America),

hereinafter called the Party of the Second Part.

WITNESSETH: This Agreement is entered into for the purpose of preventing misunderstandings between the parties; to establish a wage scale, working hours, and working conditions; and to provide for conciliation if necessary.

In accordance with Section 9-A of the Labor Management Relations Act, Party of the First Part agrees to continue to recognize the Party of the Second Part as the exclusive bargaining agent with respect to wages, hours, and other conditions of employment for all employees in its Stereotype, Plastic, and Rubber Plate Making Departments, except helpers and laborers. This Agreement is entered into subject to the provisions of the Labor Management Relations Act, 1947.

This Contract shall be known as a Union Shop Contract.

ARTICLE I EMPLOYMENT

* * *

SECTION E. The Union's responsibility applies only to a strike which it has actually caused or actually ratified.

It is specifically understood that unless the Union has actually authorized or actually ratified a strike it is not responsible for any work stoppage.

SECTION F. The Union will agree to take every reasonable means to induce any employees going out on strike which is unauthorized to return to their jobs.

SECTION G. The Union in making this Agreement is acting merely as agent for the employees covered by the Agreement and shall under no circumstances be liable for any strike, breach, or other default under the Agreement—unless it can be shown that the Union has caused or instigated such strikes or other breach.

* * *

ARTICLE II DURATION

SECTION A. The duration of this Agreement shall be for a period of three (3) years, from the First Day of November, 1964, to the First Day of November, 1967—retroactive to the date of expiration. It is mutually agreed, however, that this Agreement may be opened for adjustment of wages and other conditions by either party giving written notice to the other party sixty (60) days prior to the anniversary of the signing date during the life of this Agreement.

SECTION B. Should either party desire to negotiate for changes in any or all of the provisions of this Agreement at its expiration date, or terminate the Agreement, written notice to that effect shall be given sixty (60) days prior to the expiration date.

SECTION C. If no such notice is given, the Agreement shall run from year to year until opened in the manner above provided.

* * *

ARTICLE XVI JOINT STANDING COMMITTEE

SECTION A. A Joint Standing Committee of four (4) members shall be appointed, two (2) members of said committee to be named by the Party of the First Part, and two (2) members by the Party of the Second Part. To this committee shall be referred for settlement all disputes, including discharges, arising out of the operation of this Agreement.

The Joint Standing Committee must meet within three (3) days from the date on which either party hereto through its authorized representative notifies the other party in writing that a meeting is desired and shall proceed forthwith to settle any questions before it. Such decision is to be final and binding on both parties to this Contract.

SECTION B. If the Joint Standing Committee cannot reach a unanimous agreement on any dispute, the members of the Committee shall form a Board of Arbitration and shall select a fifth member who shall act as Chairman of the Board. Said fifth member may be selected in any manner unanimously agreed upon by the other four (4) members.

SECTION C. If the said four (4) members fail to select a fifth member within ten (10) days from the date on which either party requested the formation of the Arbitration Board, said fifth member shall be selected by the President of the INTERNATIONAL STEREOTYPERS AND ELECTROTYPERS UNION and the Chairman of the Special Standing Committee of the A.N.P.A. or their proxies upon the request of either of the parties hereto. When the fifth member is agreed upon, the Board of Arbitration thus formed shall proceed with all dispatch possible to settle the dispute. It shall require the affirmative

votes of at least three (3) of the five (5) members of the Board of Arbitration to decide the issues, and the decision of the Board of Arbitration in all cases shall be final and binding on the parties hereto. The decision of the Board of Arbitration shall be rendered within ten (10) days of the hearing and shall be signed by all members thereof, but is legal and binding when signed by the majority.

ARTICLE XVII GENERAL CONDITIONS

* * *

SECTION D. This contract is complete in itself and sets forth all the terms and conditions of the agreement of the parties hereto.

IN WITNESS WHEREOF: The parties hereto have caused this Agreement to be executed by their duly authorized representatives, the day and year first above written.

Both parties shall be required to serve written notice sixty (60) days prior to the expiration date of any Agreement of any intention either to terminate or modify the Agreement.

Akron Stereotypers & Electrotypers Union No. 37, I.S. & E.U.
By /s/ Carl J. Harter
By /s/ David L. Cummings
By /s/ Edward Earl Roberts
Akron Beacon Journal Publishing Co.
By /s/ K. L. Milburn
By /s/ Sam S. McKeel
By /s/ Charles E. Clark

"EXHIBIT A"

EFFECTIVE OCTOBER 1, 1964
TO SEPTEMBER 30, 1967

Between

BEACON JOURNAL PUBLISHING CO,
AND
THE AKRON TYPOGRAPHICAL
UNION No. 182

THIS AGREEMENT, Made and entered into this 1st day of October 1964 by and between the Beacon Journal Publishing company (hereinafter sometimes referred to as the "Employer"), through its authorized representatives and the Akron Typographical Union No. 182, (hereinafter sometimes referred to as the "Union"), by its officers or a committee duly authorized to act in its behalf, shall be effective beginning October 1, 1964, and ending Sept. 30, 1967.

If either party wishes to propose a change in wages, hours or any of the conditions of this Agreement to take effect on or after September 30, 1967, it shall notify the other party to this Agreement in writing not less than sixty days prior to the expiration of this Agreement.

ARTICLE I

* * *

Section 10—A standing committee of two representatives appointed by the Employer and a like committee of two representatives appointed by the Union, shall be maintained; and in case of a vacancy, absence or refusal of either of such representatives to act, another shall be

appointed in his place. To this Joint Standing Committee shall be referred all disputes which may arise as to the construction to be placed upon any clause of the agreement, except as provided otherwise herein, or alleged violations thereof, which can not be settled otherwise, and such Joint Standing Committee shall meet when any question of differences shall have been referred to it for decision by the executive officers of either party of this agreement. Should the Joint Standing Committee be unable to agree, then it shall refer the matter to a board of arbitration, the representatives of each party to this agreement to appoint two arbiters, and the four to agree upon a fifth. The decision of this board shall be final and binding upon both parties: Provided: That local union laws not affecting wages, hours, or working conditions and the General Laws of the International Typographical Union shall not be subject to arbitration.

* * *

ARTICLE XII

REPEAL OR AMENDMENT

Section 1—Upon repeal or amendment of the Taft-Hartley Act, any clauses in this agreement because of the restrictions of the act or court decree rendered thereunder shall automatically become null and void unless kept alive by an applicable state law.

Section 2—If any provision or practice prevailing under the contract in effect immediately prior to the enactment of the Taft-Hartley Law, which has been excluded from this contract solely because of legal restrictions is determined by legislative enactment or by decision of the court to be legal, then such provisions shall

upon written request of the union be immediately effective and enforceable hereunder.

Section 3—It is agreed that the only parties to this agreement are Beacon Journal Publishing Co. and Akron Typographical Union No. 182.

It is further agreed that the approval of this agreement by the International Typographical Union as complying with its laws does not make it a party hereto.

This agreement is complete in itself and sets forth all the terms and conditions of the agreement between the parties hereto.

This agreement is approved as being in compliance with the laws of the International Typographical Union, as limited by the Taft-Hartley Law, and the undersigned, on behalf of the Executive Council of the International Typographical Union, hereby pledges, as a matter of union policy only, its full authority under its law to the fulfillment thereof without becoming party thereto and without assuming any liability thereunder.

.....

Elmer Brown
President, International Typographical Union

IN WITNESS WHEREOF, we have hereunto set our hands and seal this

The Beacon Journal Publishing Co.

.....

K. L. Milburn

.....

C. Clark

.....

S. McKeel
Akron Typographical Union No. 182
For the Union

.....

Joseph Schifano
President

.....

Charles Stadelman
Secretary-Treasurer for the Union
Negotiating Committee for the Akron Typographical Union No 182
Robert Kendall
Chairman
Dave Mellinger
Charles Reeves

APPENDIX E

Labor Management Relations Act, 1947, as amended, Section 301 (29 U.S.C. 185 (1964), 61 Stat. 156)

SUBCHAPTER IV—LIABILITIES OF AND RESTRICTIONS ON LABOR AND MANAGEMENT

§ 185. Suits by and against labor organizations—Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

LIBRARY
PREME COURT, U. S.

FILED
NOV 10 1969
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 605

THE BEACON JOURNAL PUBLISHING COMPANY,
Petitioner,

vs.

AKRON TYPOGRAPHICAL UNION NO. 182,

and

AKRON STEREOTYPERS and ELECTROTYPERS UNION NO. 37, INTERNATIONAL STEREOTYPERS and ELECTROTYPERS UNION OF NORTH AMERICA,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 605

THE BEACON JOURNAL PUBLISHING COMPANY,
Petitioner,

vs.

AKRON TYPOGRAPHICAL UNION NO. 182,

and

AKRON STEREOTYPERS and ELECTROTYPERS UNION NO. 37, INTERNATIONAL STEREOTYPERS and ELECTROTYPERS UNION OF NORTH AMERICA,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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OPINIONS BELOW

The opinion and order of the U.S. Sixth Circuit Court of Appeals are set forth in Petitioner's Appendix (Appendix A, A1-A2).

The United States District Court for the Northern District of Ohio, Eastern Division, issued its Memorandum adopted as Findings of Fact and Conclusions of Law on May 21, 1968, and is set forth completely in Petitioner's Appendix (Appendix B, A3-A19).

On January 4, 1966, Respondent, Akron Typographical Union No. 182, formally notified Petitioner of the existence of a dispute concerning the method of computation of the Christmas bonus (Respondent's Appendix A).

On March 7, 1966, Respondent, Akron Stereotypers and Electrotypers Union No. 37, I.S.&E.U., similarly formally notified Petitioner of the existence of a similar dispute (Respondent's Appendix B).

Petitioner, since on or about the stated dates, and at all times material hereto, has refused to process and if need be arbitrate the grievance. (See stipulation, Petitioner's Appendix C, paragraph numbered 5.)

The contractual language applicable to the present case is set forth in Petitioner's Appendix (Petitioner's Appendix D). (See also Memorandum of Judge Kalbfleisch, Petitioner's Appendix B.)

The above, Respondents believe, represents a factual statement of the case and it is only because we cannot accept certain presumptions and conclusions contained in Petitioner's "Statement of Facts" that it is believed necessary to here set forth the factual situation.

ARGUMENT AND LAW

I

The Processing of Grievances under a Collective Bargaining Agreement Is an Integral Part of the Collective Bargaining Process.

Collective bargaining, as it has developed under the National Labor Relations Act, in most cases involves much more than the negotiation of increases in wage rates. The typical collective bargaining agreement covering an industrial plant has been aptly described by Archibald Cox:

> "No state or federal statute, except possibly the tax laws, covers as wide a variety of subjects or impinges upon as many aspects of the ordinary company's business or a worker's life—wages, hours of employment, working conditions, health and accident insurance, retirement, pensions, promotions, layoffs, discipline, subcontracting, technological changes, work loads, and a host of minor items." Cox, Reflections Upon Labor Arbitration, 72 Harv. L. Rev. 1482, 1490 (1959).

Or, as this Court described the agreement, in *United Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U.S. 574, 580 (1960), "a collective bargaining agreement is an effort to erect a system of industrial self-government."

This self-government has two interrelated aspects. The first is legislative—the enactment through collective bargaining of the basic code of rules to govern the relationship between employer and employee. Typically, this code is adopted for a fixed period of years. Its termination date, unlike the termination date of an instrument of commerce, is not the end of the relationship but the agreed upon time for the negotiation of amendments to the code.

The second aspect is administrative and judicial. Obviously, the collective bargaining agreement like any stat-

ute covering so much in so few words, requires interpretation and application. And this is supplied by the grievance procedure.

The agreement, of course, is actually administered by the employer, not by the union or by the employees. Joint administration is rare, if not non-existent, in the American experience. It is management's job to recruit and hire employees, to train them, to schedule the work, to assign workers to jobs, to transfer and promote employees, to pay the wages and determine the appropriate rate of pay, to lay off workers and to recall them when business picks up, and to discharge them or relieve them from work. In these actions, and all of the others which comprise the management of the enterprise, the employer is the actor and the director. The agreement guides his actions, but it is the employer who makes the decisions in the first instance. See Davey, Contemporary Collective Bargaining (1959), p. 113.

The machinery by which those actions are tested and by which, through such testing, specific content is given to the rules expressed by the agreement is the grievance procedure. The employer acts. If an employee believes that the action is contrary to the agreement, he grieves. "The processing of disputes through the grievance procedure is actually a vehicle by which meaning and content are given to the collective bargaining agreement." *United Steelworkers* v. *Warrior & Gulf Co.*, 363 U.S. 574, 581 (1960).

Grievance procedures follow a fairly uniform pattern. The first step is usually a conference between the aggrieved employee and his foreman, sometimes with and sometimes without a union representative present. Subsequent steps usually involve a series of meetings between union and employer representatives, at increasingly higher levels of au-

thority. If the matter cannot be settled at any of these steps, the union typically has the right to refer the dispute to binding arbitration.

The existence of these steps and the function they perform are of the utmost importance for this case. The steps are not merely formalities, or delaying devices. The fact that they exist almost uniformly in collective bargaining agreements is testimony that all parties regard them as significant and important parts of the system.

The function of the steps is to resolve, through analysis, review and bargaining, as many grievances as possible without arbitration. It is essential to the process that this be done. And the extent to which it is done is, in large measure, an indication of the health of the system of self-government. Indeed, one of the persistent problems faced by collective bargaining in the United States is to isolate and remedy the causes of "distressed" grievance procedures. As Arthur Ross, former Director of the Institute of Industrial Relations, University of California and more recently United States Commissioner of Labor Statistics, wrote in 1959:

> "There is no doubt that some parties arbitrate too much. They arbitrate chronically and promiscuously. Arbitration becomes a mill, rather than a court of last resort, a substitute for the grievance procedure rather than a means of strengthening it."[1]

Where this happens, as appears to be the case under the National Railroad Adjustment Board, the consequence is not only delay but a failure of the procedure and of the

1. Ross, "The Role of the Law in Arbitration: A Panel Discussion." Arbitration and the Law, Proceedings of the Twelfth Annual Meeting, National Academy of Arbitrators (BNA, 1959), p. 72. See also Ross, "Distressed Grievance Procedures and Their Rehabilitation," Labor Arbitration and Industrial Change, Proceedings of the Sixteenth Annual meeting, National Academy of Arbitrators (BNA, 1963), p. 104.

ultimate arbitration itself to fulfill its function of interpreting the agreement and settling disputes. See Mangum, Railroad Grievance Procedures, 15 Industrial and Labor Relations Review 474, 498 (1962).[2]

The grievance procedure, then, is an extension of the bargaining process. The agreement itself establishes the broad rules. As cases develop, it is the function of the grievance procedure to develop and implement the rules through the settlement of cases, by agreement where possible and by arbitration if agreement is impossible. As one authority has described it:

> "The grievance procedure is really a conference technique by which two parties agree on how a rule (which both accept) should be applied in a particular situation." Chamberlain, Labor (1958), 238.
>
> "The significance of this . . . procedure can hardly be overstressed. It is one of the truly great accomplishments of American industrial relations. For all of its defects—the bypassing of some of the appeals stages, its use by the union as a political device to convince the employees that it is looking out for their interests the slowness with which it sometimes operates—it constitutes a social invention of great importance." Id. at 240.

The system works only where each party makes an effort to maximize the number of cases settled by agreement and to minimize the number of cases settled by arbitration.

Grievances, of course, are of all sorts. Some involve the simplest of factual disputes. Others involve complex calculations of rates of pay, as under incentive plans. Some involve only the interests of the grievant. Others may in-

2. In the First Division, covering operating employees, the average time for processing a grievance through the arbitration proceedings of the Board is about six years (one or two years for processing on the properties plus between four and five years for processing by the Board). Id. at 494.

volve conflicts between employees. Almost every seniority grievance, for example, involves a claim that the grievant, rather than some other employee, should have been promoted to a particular job, or retained at the time of layoff or recalled to work when the level of operations increased. Still others involve the interpretation of general or ambiguous language in the agreement and their disposition will settle not only the particular case but the meaning of the contractual provision for the future.

Whatever the nature of the grievance, however, both the union and the employer have a vital interest in utilizing the grievance procedure, to the maximum extent possible, as a settlement machinery. The interests of the employees as a group, which the union represents, demand a course of conduct other than blind and undeviating pursuit of every individual's claim. Insistence upon a literal interpretation of language which produces an absurd result may be the way to maximize the interests of a particular grievant, but "next week, when the union pleads for common sense in handling another grievance, its words will be thrown back in its face." Cox, Rights Under a Labor Agreement, 69 Harv. L. Rev. 601, 608 (1956). On the other hand, if a union shows a willingness to drop frivolous grievances and compromise doubtful ones, the employer will be inclined to be equally accommodating. Finally, of course, unless both sides make a sincere effort to use the grievance steps for the purpose of settling grievances, rather than as mere way stations on the road to arbitration, the procedure itself will break down.

II

The Impact of Prior Decisions on the Issue Before This Honorable Court.

The Supreme Court of the United States has considered the issue raised in this case many times. To trace the

present day thinking of the Supreme Court one has to travel back no further than the case of *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, where the Court held that a grievance arbitration provision in a collective agreement could be enforced by reason of Sec. 301 (a) of the Labor-Management Relations Act. In that case the Court determined that the federal policy was to promote industrial stabilization through the collective bargaining agreement and that complete effectuation of the federal policy is achieved when the agreement contains both an arbitration provision for all unresolved grievances and an absolute prohibition of strikes, the arbitration agreement being the "quid pro quo" for the agreement not to strike (*Textile Workers* v. *Lincoln Mills*, supra).

The collective bargaining agreement states the rights and duties of the parties. It is more than a contract; it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate. See Shulman, Reason, Contract and Law in Labor Relations, 68 Harv. L. Rev. 999, 1004-1005. The collective agreement covers the whole employment relationship. It calls into being a new common law—the common law of a particular industry or of a particular plant. As one observer has put it:

> ". . . It is not unqualifiedly true that a collective bargaining agreement is simply a document by which the union and employees have imposed upon management limited, express restrictions of its otherwise absolute right to manage the enterprise, so that an employee's claim must fail unless he can point to a specific contract provision upon which the claim is founded. There are too many people, too many problems, too many unforeseeable contingencies to make the words of the contract the exclusive source of rights and duties. One cannot reduce all the rules governing a community like an industrial plant to fifteen or even fifty pages.

> "Within the sphere of collective bargaining, the institutional characteristics and the governmental nature of the collective-bargaining process demand a common law of the shop which implements and furnishes the context of the agreement. We must assume that intelligent negotiators acknowledged so plain a need unless they stated a contrary rule in plain words." (Cox, Reflections Upon Labor Arbitration, 72 Harv. L. Rev. 1482, 1498-1499 (1959).)

A collective bargaining agreement is an effort to erect a system of industrial self-government. When most parties enter into contractual relationship, they do so voluntarily, in the sense that there is no real compulsion to deal with one another, as opposed to dealing with other parties. This is not true of the labor agreement. The choice is generally not between entering or refusing to enter into a relationship, for that in all probability pre-exists the negotiations. Rather, it is between having that relationship governed by an agreed-upon rule of law or leaving each and every matter subject to a temporary resolution dependent solely upon the relative strength, at any given moment, of the contending forces. The mature labor agreement may attempt to regulate all aspects of the complicated relationship, from the most crucial to the most minute over an extended period of time. Because of the compulsion to reach agreement and the breadth of the matters covered, as well as the need for a fairly concise and readable instrument, the product of negotiations (the written document) is, in the words of the late Dean Shulman, "a compilation of diverse provisions; some provide objective criteria almost automatically applicable; some provide more or less specific standards which require reason and judgment in their application; and some do little more than leave problems to future consideration with an expression of hope and good faith." Shulman, supra, at 1005. Gaps may be left to be filled in by reference to the practices of

the particular industry and of the various shops covered by the agreement. Many of the specific practices which underlie the agreement may be unknown, except in hazy form, even to the negotiators. Courts and arbitration in the context of most commercial contracts are resorted to because there has been a breakdown in the working relationship of the parties; such resort is the unwanted exception. But the grievance machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government. Arbitration is the means of solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the variant needs and desires of the parties. The processing of disputes through the grievance machinery is actually a vehicle by which meaning and content is given to the collective bargaining agreement.

Apart from matters that the parties specifically exclude, all of the questions on which the parties disagree must therefore come within the scope of the grievance and arbitration provisions of the collective agreement. The grievance procedure is, in other words, a part of the continuous collective bargaining process. It, rather than a strike, is the terminal point of a disagreement:

> "A proper conception of the arbitrator's function is basic. He is not a public tribunal imposed upon the parties by superior authority which the parties are obliged to accept. He has no general charter to administer justice for a community which transcends the parties. He is rather part of a system of self-government created by and confined to the parties. . . ." Shulman, supra, at 1016.

The labor arbitrator performs functions which are not normal to the courts; the considerations which help him fashion judgments may indeed be foreign to the compe-

tence of courts. The labor arbitrator's source of law is not confined to the express provisions of the contract, as the industrial common law—the practices of the industry and the shop—is equally a part of the collective bargaining agreement although not expressed in it. The labor arbitrator is usually chosen because of the parties' confidence in his knowledge of the common law of the shop and their trust in his personal judgment to bring to bear considerations which are not expressed in the contract as criteria for judgment. The parties expect that his judgment of a particular grievance will reflect not only what the contract says but, insofar as the collective bargaining agreement permits, such factors as the effect upon productivity of a particular result, its consequence to the morale of the shop, his judgment whether tensions will be heightened or diminished. For the parties' objective in using the arbitration process is primarily to further their common goal of uninterrupted production under the agreement, to make the agreement serve their specialized needs. The ablest judge cannot be expected to bring the same experience and competence to bear upon the determination of a grievance, because he cannot be similarly informed.

It is submitted that the case at bar clearly involves a dispute with a very clear and concise portion of the contract at issue as well as a practice which has been in existence nearly thirty (30) years.

On June 20, 1960, the Supreme Court handed down decisions in three cases which should be clearly dispositive of the instant controversy. One of them has been drawn upon heavily by the author of this memorandum. (Reference is made to the cases of *United Steelworkers of America* v. *American Manufacturing Company*, 363 U.S. 564; *United Steelworkers of America* v. *Warrior and Gulf Navigation Company*, 363 U.S. 574; and, *United Steelworkers*

of America v. *Enterprise Wheel and Car Corporation*, 363 U.S. 593.)

In the instant case the Union has said, in effect, that the Company has violated a specific portion of the labor agreement as well as a custom and practice of long standing.

It cannot be argued, with any degree of sincerity, that the parties have agreed to allow the courts to interpret and apply the provisions of the labor agreement but yet the Company is doing exactly this and have frustrated the Union's every attempt to bring this matter before the proper tribunal, i.e., a panel of arbitrators.

In the case of *Steelworkers* v. *Warrior & Gulf Navigation Co.* (supra), the Supreme Court of the United States said:

> "Yet to be consistent with congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration, the judicial inquiry under Section 301 must be strictly confined to the question whether the reluctant party did agree to arbitrate the grievance or agreed to give the arbitrator power to make the award he made. An order to arbitrate the particular grievance should not be denied unless it may be said with *positive assurance* that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." (Emphasis supplied).

In the case of *Steelworkers* v. *Warrior & Gulf Navigation Co.* (supra), the Court had this to say:

> "In the absence of any expressed provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail, particularly where, as here, *the exclusion clause is vague and the arbitration clause quite broad.* Since any attempt by a court to infer such a purpose necessarily comprehends the

merits, *the court should view with suspicion an attempt to persuade it to become entangled in the construction of the substantive provisions of a labor agreement, even through the back door of interpreting the arbitration clause, when the alternative is to utilize the services of an arbitrator.*" (Emphasis supplied).

The Petitioner in its brief has blithely ignored the full import of the Steelworkers Trilogy of cases by excerpting one sentence which inferentially supports its position.

There can be little doubt that the case of *Harris Structural Steel Co.* v. *United Steelworkers*, 298 F.2d 363 (1962), cert. den. 369 U.S. 851, bears almost directly on point.

The defendant would have the Court believe that the Union has the right to strike over the matter at issue even though the Union has agreed in the labor contract to submit all disputes over the interpretation and application of the bargaining agreement, to the grievance procedure up to and including arbitration.

The Unions are attempting to meet the congressional policy and intent squarely to effectuate a peaceful resolution of the problems existing between the parties by the procedure it is attempting to follow.

Additionally, it appears to the author of this brief that, if a union and/or a company jointly provide for compulsory and binding arbitration of a dispute, it is the equivalent of a no-strike pledge concerning disputes subject to arbitration, even in the absence of an express no-strike clause. (See *Local 174, Teamsters* v. *Lucas Flour Co.*, (1962) 369 U.S. 95; *Teamsters, Local 25* v. *W. L. Mead, Inc.*, (C.A. 1, 1956) 230 F.2d 576, cert. den. 352 U.S. 802;

Mine Workers, District 50 v. *Haislip Baking Co.*, (C.A. 4, 1955) 223 F.2d 872; *Dubs Mfg. Corp.* (*Steelworkers*), 148 NLRB 1114, enf'd (C.A. 6, 1965) 52 LC 16730.)

One other decision should be brought to the attention of the Court which involves the same circumstances present in the instant controversy. It also involves the same Petitioner but different unions were parties to the dispute. It should be pointed out that there are approximately eight unions representing bargaining unit employees at the Petitioner's plant. The Christmas bonus formula was changed with respect to all of them. Four of the unions elected to file charges with the National Labor Relations Board. As a part of its order, the Board ruled that the Company, Petitioner here, must:

> ". . .; reimburse employees for loss due to revised bonus formula;. . ."
>
> (See 65 LRRM 1126; 164 NLRB No. 98.)

Petitioner would have the Court believe that because letters were given each employee from 1961 through 1965 stating, in effect, that the Christmas bonus was a gift, makes it so. These letters are nothing more than self-serving declarations.

The Respondents could not have objected through the grievance procedure for any effective relief as long as the Company continued to pay the bonus properly. A letter to the effect that the bonus came from the man in the moon would have had about the same effect, so long as the bonus was paid.

Here again, however, Petitioner is seeking the Court to substitute its judgment for that of the arbitrator.

CONCLUSION

In view of all the facts, argument and law in this case, it is respectfully submitted that the appellate and trial court's decision and order should be affirmed in all respects.

Respectfully submitted,

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RESPONDENTS' APPENDIX A

January 4, 1966

The Joint Standing Committee
Beacon Journal Publishing Company
Akron, Ohio

Gentlemen:

Pursuant to Article I, Section 10, of the current bargaining agreement between the Beacon Journal Publishing Company and the Akron Typographical Union No. 182, your Committee is hereby notified that a dispute exists between the Employer and the Union concerning the method of computation of the Christmas bonus used by the Employer to pay Christmas bonus to the members of Akron Typographical Union No. 182 for the year 1965, and protest is further made of the amount received by each member of the stated Union.

Historically, over a period of many years, the Employer has computed the Christmas bonus for members of the stated Union in accordance with a set formula which formula was not used during the computation of the 1965 Christmas bonus. The Company's unilateral action in this case constitutes a violation of the Collective Bargaining Agreement between the parties in that it violates a custom and practice in usage between the parties for so many years.

Further, the Union is of the opinion that the Company's unilateral action violates the second paragraph of the preamble of the contract between the parties in that it has changed wages and conditions of employment without negotiating same with the Union.

This action and the request is by unanimous decision of the Executive Officers of the Akron Typographical Union No. 182, and we request a meeting of the Joint Standing Committee at the earliest possible time to resolve the dispute.

Sincerely yours,

.....

Akron Typographical Union
No. 182

RESPONDENTS' APPENDIX B

March 7, 1966

The Joint Standing Committee
Beacon Journal Publishing Company
Akron, Ohio

Gentlemen:

Pursuant to Article XVI of the current bargaining agreement between the Beacon Journal Publishing Company and the Akron Stereotypers and Electrotypers Union No. 37, I.S.&E.U., your Committee is hereby notified that a dispute exists between the Employer and the Union concerning the method of computation of the Christmas bonus used by the Employer to pay Christmas bonus to the members of Akron Stereotypers and Electrotypers Union No. 37, I.S.&E.U. for the year 1965, and protest is further made of the amount received by each member of the stated Union.

Historically, over a period of many years, the Employer has computed the Christmas bonus for members of the stated Union in accordance with a set formula which formula was not used during the computation of the 1965 Christmas bonus. The Company's unilateral action in this

case constitutes a violation of the Collective Bargaining Agreement between the parties in that it violates a custom and practice in usage between the parties for so many years.

Further, the Union is of the opinion that the Company's unilateral action violates Article II, Sections A and B of the contract between the parties in that it has changed wages and conditions of employment without negotiating same with the Union.

This action and the request is by unanimous decision of the Executive Officers of the Akron Stereotypers and Electrotypers Union No. 37, I.S.&E.U., and we request a meeting of the Joint Standing Committee at the earliest possible time to resolve the dispute.

Sincerely yours,

Akron Stereotypers and Electrotypers Union No. 37, I.S.&E.U.